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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. FRANCISCO RENE MENDIBLES, Appellant.	2 CA-CR 2009-0042 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20063763

Honorable Stephen C. Villarreal, Judge

AFFIRMED

Barton & Storts, P.C.
By Brick P. Storts, III
Tucson
Attorneys for Appellant

E S P I N O S A, Presiding Judge.

¶1 Appellant Francisco Mendibles was convicted after a jury trial of theft of a means of transportation, burglary, and possession of burglary tools. The trial court found Mendibles had two historical prior felony convictions and sentenced him to concurrent, presumptive terms of imprisonment, the longest of which was 11.25 years.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has reviewed the entire record and found no arguable issue to raise on appeal. In compliance with *Clark*, counsel has provided "a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record." 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Mendibles has filed a supplemental brief in which he appears to argue the evidence did not support his conviction.

¶3 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and are satisfied it supports counsel's recitation of the facts. Viewed in the light most favorable to upholding the jury's verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established a Tucson Police Officer observed Mendibles driving a vehicle that had been reported stolen. When Mendibles saw the officer approaching, he turned the vehicle into the carport of an unknown residence to avoid being stopped. The officer turned in behind him and activated the lights of his patrol car, but Mendibles got out of the vehicle and began walking to the side entrance of the home. The officer then commanded Mendibles to stop and took him into custody. When the officer later asked Mendibles why he had attempted to evade the stop, Mendibles responded that he believed warrants had been issued for his arrest.[1] Investigation of the stolen vehicle revealed

[1]Mendibles appears to challenge the characterization of his actions during the pursuit as evasive. To the extent his brief may be read to challenge the court's instruction permitting the jury to consider evidence of Mendibles's attempted flight in determining his guilt, we find the evidence sufficient to support the instruction. Mendibles testified at trial that he had pulled into the driveway of an unknown residence to avoid being stopped by the officer and

the steering column had been torn apart and a compact disc player had been removed. A screwdriver and wrench were found in the vehicle, but other items belonging to the owner were missing. Mendibles told the officer, and later testified at trial, that he had started the ignition with a screwdriver.

¶4 In his supplemental brief, Mendibles argues he did not know or have reason to know the vehicle was stolen. As he had stated to the police and in his testimony at trial, Mendibles maintains he paid thirty dollars to borrow the vehicle from an acquaintance named Muggy, who claimed to have purchased the vehicle. According to Mendibles, the police should have done more to verify his statements by searching for Muggy immediately after Mendibles was arrested.

¶5 All of these same arguments were raised by Mendibles's counsel at trial.[2] But the jury was not required to believe Mendibles's testimony. *See State v. Dickens*, 187 Ariz. 1, 23, 926 P.2d 468, 490 (1996). Nor was the state required to disprove "every conceivable hypothesis of innocence when guilt has been established by circumstantial evidence." *State v. Nash*, 143 Ariz. 392, 404, 694 P.2d 222, 234 (1985). Ample circumstantial evidence

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was "trying to play like [he] live[d] there so it would be okay."

[2]Although his argument is not entirely clear, Mendibles appears to assert his trial counsel was also at fault for his conviction. But we do not address claims of ineffective assistance of counsel on appeal. *State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002). Such claims may only be addressed in proceedings for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. *See id.*, *see also State ex rel. Thomas v. Rayes*, 214 Ariz. 411, ¶ 20, 153 P.3d 1040, 1044 (2007) ("[C]onsistent with *Spreitz*, . . . a defendant may bring ineffective assistance of counsel claims *only* in a Rule 32 post-conviction proceeding—not before trial, at trial, or on direct review.").

supported Mendibles's convictions, and we do not reweigh the evidence on appeal. *State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004).

¶6 We thus conclude substantial evidence supported findings of all the elements necessary for Mendibles's convictions, *see* A.R.S. §§ 13-1505, 13-1506, 13-1814(A)(5), (B), and his sentences are within the range authorized, *see* former A.R.S. § 13-604(C), (D).[3] In our examination of the record pursuant to *Anders*, we have found no reversible error and no arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744. Therefore, Mendibles's convictions and sentences are affirmed.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

GARYE L. VÁSQUEZ, Judge

[3]The provisions of Arizona's criminal code were renumbered effective December 31, 2008. *See* 2008 Arizona Sess. Laws, ch. 301, §§ 1-120. For consistency with trial court documents, we refer in this decision to the statutes as they were numbered when Mendibles committed these offenses and was sentenced, rather than by their current section numbers.